

**COMMITTEE ON WATER AND SANITATION**  
(Standing Committee of Berkeley County Council)

**Chairman:** Mr. Timothy J. Callanan, Council Member District No. 2

A meeting of the **COMMITTEE ON WATER AND SANITATION**, Standing Committee of Berkeley County Council, was held on **Monday, July 13, 2009**, in the Assembly Room of the Berkeley County Administration Building, 1003 Highway 52, Moncks Corner, South Carolina, at 7:05 p.m.

**PRESENT:** Chairman Timothy J. Callanan, Council District No. 2; Committee Member Phillip Farley, Council District No. 1; Committee Member Cathy S. Davis, Council District No. 4; Committee Member Jack H. Schurlknight, Council District No. 6; Committee Member Caldwell Pinckney, Jr., Council District No. 7; Supervisor Daniel W. Davis, ex officio; Mrs. Nicole Scott Ewing, County Attorney; and Ms. Barbara B. Austin, Clerk of County Council. Committee Member Robert O. Call, Jr., Council District No. 3, Committee Member Dennis L. Fish, Council District No. 5, and Committee Member Steve C. Davis, Council District No. 8, were excused from this meeting.

In accordance with the Freedom of Information Act, the electronic and print media were duly notified.

*During periods of discussion and/or presentations, minutes are typically condensed and paraphrased.*

Chairman Callanan called the meeting to order and asked for approval of minutes from a meeting of the Committee on Water and Sanitation held June 8, 2009.

It was moved by Committee Member Farley and seconded by Committee Member Schurlknight to **approve** the minutes as presented. The motion passed by unanimous voice vote of the Committee.

**A. Consideration of a Resolution affecting the payment of certain fees to Berkeley County Water and Sanitation.**

Mr. David Jennings, Berkeley County Water and Sanitation (BCWS) Attorney, stated that two resolutions had been presented to the Committee. The original resolution, presented last Fall, provided a short grace period for developments that had been submitted for permitting from the Department of Health and Environmental Control (DHEC) between June 1 and June 30, 2008. This was the grace period provided for all houses in those developments with regard to connection to the water and sewer system prior to November 14, 2008. There would be approximately 13 residences that would fall within the contents of the first proposed resolution.

Mr. Jennings continued and stated that a second proposed resolution, containing a slight modification from the first proposed resolution, was prepared by Mr. Neil Robinson on behalf of

Blackstone. This second version utilized the same 30-day submission period for applications submitted to DHEC for permitting, but would grandfather all lots in a subdivision, regardless of the timing of construction of the residences. This second proposed resolution would apply to 125 lots.

Chairman Callanan stated for clarification that this was a time period last year, prior to BCWS increasing impact and connection fees. At that time, developers were given an opportunity to prepay. Those falling into the grace period of June 1<sup>st</sup> thru June 30<sup>th</sup> who had an application submitted to DHEC, but had not received a response in time from DHEC to actually prepay, would pay the higher fee schedule that went into effect July 1, 2008. This was a situation developers were in through no fault of their own, as they were at the mercy of DHEC responding in time of the allotted grace period.

Mr. Jennings stated that the first proposed resolution, prepared by Mr. Jennings, provided partial relief. The second proposed resolution, prepared by Mr. Robinson, provided complete relief.

Mr. Jennings continued and stated that Council did not adopt any resolution in terms of relief. There was no discussion when the first resolution was originally presented, because of discussion of the larger grandfather issue regarding impact fees. This issue came back to Council in the Spring. BCWS provided relief to Blackstone for 13 lots already. That was granted at the staff level. The proposed resolution presented last Fall was to ratify the relief which staff had already given to Blackstone.

It was moved by Committee Member Schurlknight and seconded by Committee Member Pinckney to **approve consideration** of a **resolution** providing no additional relief by affecting the payment of **certain fees to Berkeley County Water and Sanitation.**

Committee Member Farley asked for clarification with regard to which proposed resolution the motion pertained to.

Mr. Jennings responded that the proposed resolution referred to in the motion would provide no relief beyond what staff had given to Blackstone already, which amounted to approximately \$25,000 of grandfathering. Blackstone was allowed to pay the old fees, because it had houses under construction and soon to be connected.

Committee Member Farley questioned if this was for the grace period of June 1<sup>st</sup> thru June 30<sup>th</sup>.

Mr. Jennings responded June 1<sup>st</sup> thru June 30<sup>th</sup> to be the grace period used for the submission of projects to DHEC. Blackstone had been working on its project for approximately one year. Information Mr. Jennings received from BCWS reflected that the letter of intent, plans and specifications for the development were submitted to BCWS in October 2006. The project had been "in the works" for approximately 20 months.

Committee Member Schurlknight questioned the amount of funds involved with complete relief.

Mr. Jennings responded that full relief for Blackstone would be an additional \$117,000. There is another project, which fell into the same category, for a total relief of over \$200,000.

Committee Member Schurlknight stated his concern of a bad precedent being set for the future if complete relief was granted.

Chairman Callanan stated that if any of these individuals had been given enough warning that fees were increasing, they could have submitted applications to DHEC earlier. This situation was not limited to Blackstone only. Individuals involved made efforts to pre-pay, but could not, because they did not receive a response from DHEC in time.

Without objection from the Committee, Chairman Callanan recognized and allowed Mr. Neil Robinson to speak.

Mr. Robinson addressed Council and stated that partial relief was not relief, but rather the County doing what it said it would do. Mr. Robinson stated that his client, Blackstone, did everything it was asked to do, in order to qualify for the old fees. In fact, Blackstone, on the last day, did pay the fees for 74 lots in its development. After that, the developer commenced to draw permits. One month later, BCWS contacted Blackstone and stated that the new fees should apply to the project. Mr. Robinson's client wrote a detailed letter to BCWS. Upon receipt of that letter, BCWS stated that Blackstone was right and would be treated unfairly if it was charged the new fees, because Blackstone did all that was asked of BCWS. All that could be done was done, and due to the fact that DHEC still had not released the permits, it would not be held against Blackstone. Mr. Robinson's client asked that BCWS send Blackstone a letter to that affect. Mr. Robinson stated that six weeks ago, he presented a copy of that letter, along with a copy of the check for the payment of the fees, to the Committee on Water and Sanitation. Mr. Robinson stated that Blackstone had a right to rely on what it was told by BCWS. Blackstone acted on reliance of what it was told. For BCWS to treat Blackstone otherwise, would be a travesty.

In conclusion, Mr. Robinson asked the Committee to consider adoption of the second resolution, which would allow for complete relief.

Mr. Jennings stated that for simplistic sake, the Committee had a copy of the proposed resolution, which was presented to the Committee first. The Robinson resolution (second proposed resolution), presented to the Committee earlier, would be legal's concept of the relief Mr. Robinson's client is entitled to.

Mr. Jennings continued and stated that Committee Member Schurlknight's motion was with regard to the "Jennings" proposed resolution.

Mrs. Nicole Scott Ewing, County Attorney, recommended that the section in the proposed resolution beginning with “NOW, THEREFORE, BE IT RESOLVED THAT” be read into the record for further clarification with regard to the motion on the floor.

Mr. Jennings read the section with regard to the motion on the floor, as follows:

“NOW, THEREFORE, BE IT RESOLVED THAT

1. Every developer, who between June 1, 2008 and June 30, 2008, submitted a water extension project and/or a sewer extension project to SCDHEC requesting a permit to operate, will be charged the fees in effect on June 30, 2008 for all structures which connect to the County’s water and/or sewer systems prior to the close of business on November 14, 2008.”

Committee Member Schurlknight confirmed that to be the passage within the proposed resolution contained in his motion.

Committee Member Pinckney, who had seconded the motion, concurred with Committee Member Schurlknight.

The motion failed to pass. Committee Member Schurlknight and Committee Member Pinckney voted, “Aye”. Committee Member Farley and Committee Member Cathy Davis voted, “Nay”. The tie vote of two (2) “Ayes” and two (2) “Nays” was broken with Chairman Callanan voting “Nay”.

It was moved by Committee Member Farley and seconded by Committee Member Cathy Davis to **approve consideration** of a **resolution** affecting the payment of **certain fees to Berkeley County Water and Sanitation**, wherein it states: “NOW, THEREFORE, BE IT RESOLVED THAT 1) Every developer, who between June 1, 2008 and June 30, 2008 submitted a water extension project and/or a sewer extension project to SCDHEC requesting a permit to operate, will be charged the fees in effect on June 30, 2008 for that project, provided all fees for that project are paid prior to the close of business on July 31, 2009”. The motion passed by majority voice vote of the Committee. Committee Member Farley and Committee Member Cathy Davis voted, “Aye”. Committee Member Schurlknight and Committee Member Pinckney voted, “Nay”. The tie vote of two (2) “Ayes” and two (2) “Nays” was broken with Chairman Callanan voting “Aye”.

## **B. Discussion, Re: Mandatory Water Connections**

Mr. Jennings stated that in the earlier days of Water and Sanitation, much of the County’s funding came from what was originally referred to as Farmers Home Administration under the Department of Agriculture. In recent years, it changed to Rural Development. In the 1980’s, Berkeley County was much more rural than it is now, and Farmers Home was the County’s primary funding source back then. One of the requirements of Farmers Home for a period of years was that County Council adopt a mandatory connection ordinance for water and sewer. There was a great deal of discussion both in the community and with County Council regarding

the concept of mandatory connections. In 1995, County Council was faced with the option of not borrowing money from Rural Development, but rates were lower than what the County could get in the commercial market, that was if money could have been borrowed at all during that time. After contentious discussion and debate, County Council adopted the mandatory connection ordinance that is currently part of the Berkeley County Code of Ordinances.

Mr. Jennings continued and stated that when Berkeley County has actually filed legal actions to compel connection, the result of that has been obtaining an order from the judge requiring connection within 90 days, which remains as a lien on the property. It is a judgment on the property, and judgments last for a period of 20 years. Within the last several years, one of the public service districts in Charleston adopted mandatory connections, went to court, obtained the order requiring connections, and it brought property owners before the judge. One property owner was taken to prison, which has never been Berkeley County's intention to take place. Mr. Jennings stated that Berkeley County has never done more than establish a lien on a property, which would provide for connection to the system if the property was sold or the property owner attempted to mortgage the property. It is not something that happens on a regular basis.

Mr. Ed Rogers, BCWS Customer Service Director, addressed the Committee and stated that if Berkeley County eliminated mandatory connections, there would be less incentive for BCWS to expand its system in the rural part of the County. There are a lot of areas in the County that have bad water and in need of good water, but BCWS would not be able to afford to run lines if there was no assurance of residents tying into those lines. Mr. Rogers stated that mandatory connection was a requirement of Rural Development, and it is a requirement of several federal agencies. Another issue would be additional incentive points for grant applications. Berkeley County is not considered a poor county comparatively speaking, to the other 45 counties in South Carolina. Berkeley County must compete at the state level for grants every year. Extra points are received for having the mandatory connection ordinance, and the County has been very fortunate in receiving grants every year. Most importantly, if mandatory connections are eliminated, it would greatly affect BCWS revenues, as its budget would suffer.

Mr. Rogers continued and recommended, in consideration of Berkeley County citizens during this unstable economic time, to recognize property owners that have individual water supplies, but also have public water available. At this time, the connection fee for water is \$2,500. As a possible alternative to eliminating mandatory connections, Mr. Rogers recommended that BCWS offer a discount period for residents who have public water available to their primary residence. The recommendation would be to reduce fees by \$1,000 for a 90-day period. Residents would be tied into the system as rate payers, and the balance of the fee (\$1,500) would be paid up front or financed at a rate of \$15.00 per month. Residents who already paid the higher fee since July 1, 2008, would be contacted regarding eligibility for a refund of \$1,000. Everyone possible would be notified about the new discount period. BCWS has a list of those connections, and letters offering this opportunity could be sent to those listed. This would also apply to new properties. If mandatory connections continued, BCWS could expand into new areas/communities, and offer the 90-day discount period to pay \$1,500, versus \$2,500.

Committee Member Schurlknight questioned if there were any modifications (i.e., grandfathering) that could be made with regard to mandatory connections for those residents with existing wells that have good drinking water and could pass a DHEC test. Any new residences from this point on would not drill wells, but rather tie into the BCWS system.

Mr. Jennings responded that he could explore such a modification to see if it would impact the points that BCWS would accrue in the evaluation system (with federal funding).

Chairman Callanan stated that Mr. Rogers' recommendation would help somewhat, but a lot of the expense residents incurred with a mandatory connection was not just the fee, but also the cost of running lines from a house to the curb, retrofitting plumbing in the house to handle any change in water pressure and the monthly fee that would have to be paid from then on. Financing the connection fee at a rate of \$15.00 per month would still create a lien on the property until that fee was paid. Chairman Callanan stated that it would not help a lot of citizens dealing with the total cost of expenses in connecting to the County's system. Chairman Callanan recommended that the mandatory connection ordinance remain in place, but an amendment to that ordinance be adopted, wherein, those individuals having existing operable wells be exempt. If a well went dry, the mandatory connection would then apply. Mandatory connections are important with new construction where there is nothing on the property and the BCWS system is available for tie-in. The mandatory connection ordinance would then continue to allow for credits with grant applications, etc.

Discussion with regard to mandatory water connections was accepted as information, with no action required of the Committee.

**C. Mr. Mark Schlievert, Director of Solid Waste, Re: Authorization to Apply for EPA 50/50 Grant**

Mr. Schlievert stated that BCWS had an opportunity to apply for an EPA Grant. This would be a 50 percent matching funds grant. Projects considered would fall into the \$500,000 range. BCWS currently has the Landfill Gas to Energy Project, which these grant funds could be applied to. BCWS has identified a Blower/Flare Station, at a cost of \$462,000, of which \$308,000 would be requested from EPA, with matching funds of \$154,000 required of BCWS. The Flare Station would provide the mechanism for burning off methane and other gases, in order to receive carbon credits for the software. This station is already part of the existing Landfill Gas to Energy Project, and this grant would be available, rather than BCWS spending its funds. Mr. Schlievert asked for the Committee's approval to apply for the EPA Grant.

It was moved by Committee Member Farley and seconded by Committee Member Pinckney to **approve application** for an **EPA 50/50 Grant**, in the amount of \$308,000 for a Blower/Flare Station as part of the Landfill Gas to Energy Project, with matching funds in the amount of \$154,000 required of BCWS. The motion passed by unanimous voice vote of the Committee.

Without objection, Supervisor Daniel Davis informed the Committee that he had a discussion with the City Administrator of Hanahan with regard to a tornado that hit a section of Hanahan just recently. Mr. Tom Smith was present the night of the tornado and the following morning to assess the damage. The following Monday, Mr. Schlievert and his team were present to assist with the clean-up. The City of Hanahan expressed its gratitude for the great job County employees provided to that area.

It was moved by Committee Member Schurlknight and seconded by Committee Member Pinckney to **adjourn** the meeting of the Committee on Water and Sanitation. The motion passed by unanimous voice vote of the Committee.

Meeting adjourned at 7:42 p.m.

August 10, 2009

Date Approved

**COMMITTEE ON WATER AND SANITATION**  
(Standing Committee of Berkeley County Council)

Chairman: Mr. Timothy J. Callanan, District No. 2

Members: Mr. Phillip Farley, District No. 1  
Mr. Robert O. Call, Jr., District No. 3  
Mrs. Cathy Davis, District No. 4  
Mr. Dennis L. Fish, District No. 5  
Mr. Jack H. Schurlknight, District No. 6  
Mr. Caldwell Pinckney, Jr., District No. 7  
Mr. Steve C. Davis, District No. 8  
Mr. Daniel W. Davis, Supervisor, ex officio

A **meeting** of the **COMMITTEE ON WATER AND SANITATION**, Standing Committee of Berkeley County Council will be held on **Monday July 13, 2009**, following the meetings of the Committees on Land Use at **6:00 p.m.**, in the Assembly Room, Berkeley County Administration Building, 1003 Highway 52, Moncks Corner, South Carolina.

**AGENDA**

**APPROVAL OF MINUTES**

**June 8, 2009**

- A. Consideration** of a **Resolution** affecting the payment of certain fees to Berkeley County Water and Sanitation.
- B. Discussion**, Re: Mandatory Water Connections.
- C. Mr. Mark Schlievert, Director of Solid Waste**, Re: Authorization to apply for EPA 50/50 grant.

July 8, 2009  
S/Barbara B. Austin, CCC  
Clerk of County Council